

A NEWSLETTER FROM
MANNHEIMER SWARTLING
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Data Protection



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New stricter rules for processing of personal data

In January 2012 the European Commission published a proposal for a new Data Protection Regulation in order to create uniform data protection rules across the EU and to thereby help companies to operate in the internal market.

After considerable legislative work in the EU, a political agreement was reached in January 2016 and in April 2016 the new data protection regulation was adopted. Companies now have two years to adapt before the regulation becomes applicable in all member states on 25 May 2018. It also repeals the current Swedish Personal Data Act (PUL) (Sw. *Personuppgiftslagen*).

The government has appointed a commission to suggest how other Swedish legislation on data protection needs to be adapted to the regulation. The inquiry will present its proposal in May 2017. We expect that the investigation will lead to the regulation being complemented by some local Swedish legislation, for example regarding the processing of employees' personal data.

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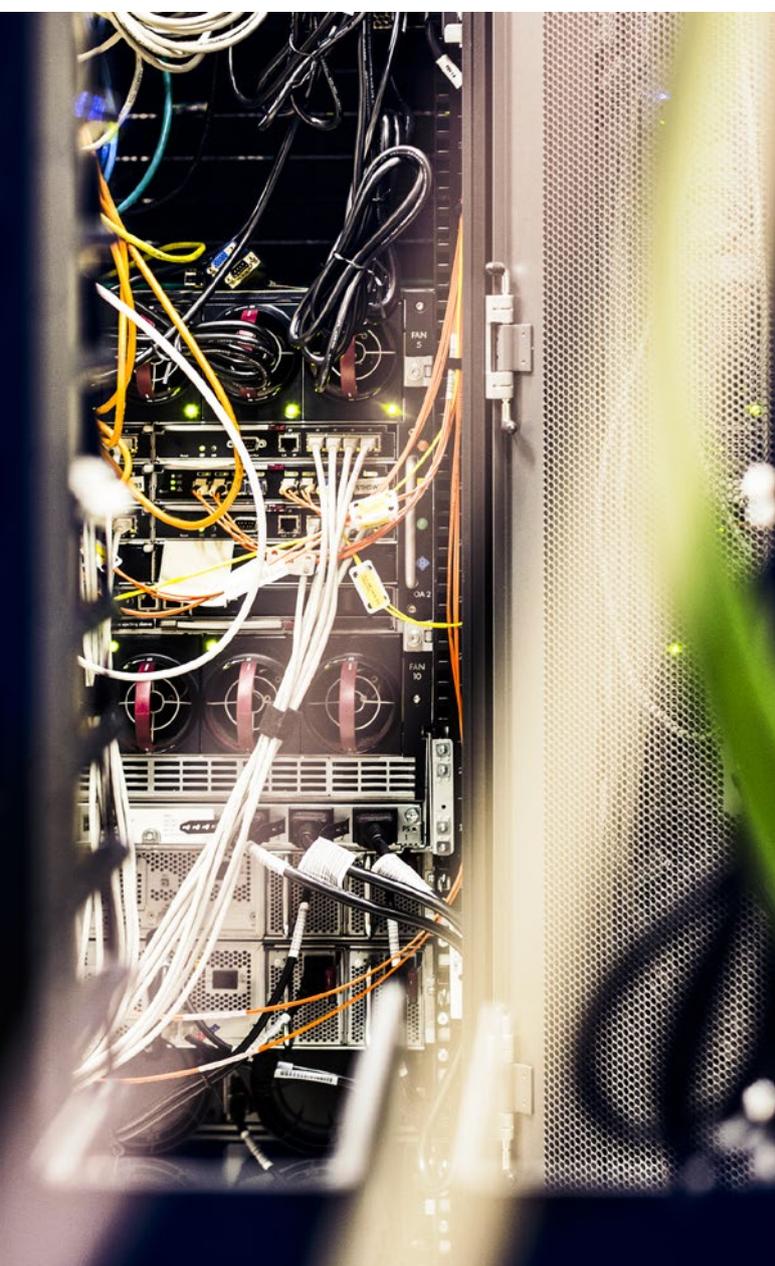
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How does the regulation affect companies?

The regulation contains many additions and changes. Including, amongst other significant additions, significantly increased compliance requirements for companies and high penalties for non-compliance. Some of the most important novelties are:

THE SAME RULES APPLY ACROSS THE ENTIRE EU

Today the legislation is based on a directive and each Member State has its own legislation regarding the processing of personal data. This means that companies operating in different Member States must take into account the local rules for each country. As the new rules are implemented in the form of a regulation, it will – in principle – be the same rules that apply in all Member States.



“ONE-STOP SHOP”

Companies will under the new rules only have to be in contact with one data protection authority, namely the authority of the country where the group has its headquarters. For companies with their headquarters in Sweden, the Swedish Data Inspection Board will become the supervisory authority for the operations of the entire group.

ACCOUNTABILITY

The regulation requires companies to demonstrate that they meet the requirements of the regulation. This could for example be done through privacy policies and codes of conduct. Companies must also keep an internal inventory of all their personal data processing. A company must, on the Data Inspection Board’s request, be able to present their internal documentation regarding its processing of personal data.

STRONGER PROTECTION FOR THE INDIVIDUAL

The rights of the individual are strengthened by the regulation. Companies will need to provide more detailed information on the processing of personal data. The individual is also given the right to be “forgotten”, meaning that companies may under certain circumstances be required to delete all information stored about an individual.

DATA PROTECTION IMPACT ASSESSMENTS

The regulation requires companies to conduct a Data Protection Impact Assessment prior to initiating processing that could bring considerable privacy risks for individuals, such as the use of video surveillance and monitoring of employees.

DATA BREACH NOTIFICATION

In the event of a data breach, for example, if personal data was spread unintentionally or through hacking, the company must as a rule report the incident to the Data Inspection Board within 72 hours of the company having been informed of the breach. In addition, the company must, under certain circumstances, inform the individuals concerned by the data breach.

INCREASED RESPONSIBILITY FOR DATA PROCESSORS

Data processors are companies that process personal data on behalf of other companies, for example IT providers. Data processors’ responsibility has increased as of the regulation. For example, the processor must keep an inventory of their own processing, carry out Data Protection Impact Assessments and in some cases appoint a Data Protection Officer. Furthermore the processor may be subject to administrative penalties if the requirements in the regulation are not met.

DATA PROTECTION OFFICER

Many companies will be obligated to appoint a Data Protection Officer. This applies to companies that process large amounts of sensitive personal data. It is required that the Data Protection Officer has the necessary knowledge of the regulation.

SIGNIFICANTLY HARSHER SANCTIONS

The most noted change is that non-compliant companies risk receiving a fine of up to EUR 20.000.000 or as much as 4% of the company’s global annual turnover when the regulation enters into force on 25 May 2018.



How can companies prepare?

Companies now have two years to adapt to the regulation. To make sure that a company meets the regulation's requirements, the company's current processing of personal data must be reviewed.

We recommend that companies do the following:

- Make sure that the organisation is able to handle the regulation, prepare the company for the new requirements and appoint a Data Protection Officer;
- Map out the company's current processing and identify its main data protection risks;
- Evaluate (establish and update) routines, policies and other documentation regarding the company's processing of personal data;
- Specifically go through how companies request consent;
- Set up screening procedures;
- Map transfers of personal data to third countries.

Mannheimer Swartling's expertise in the area of data protection

We have extensive experience in assisting clients with issues regarding data protection and including compliance projects. Our team, consisting of roughly 20 lawyers, helps clients to map existing personal data processing, to perform Data Protection Impacts Assessments, to establish privacy policies and consent forms, to bring out routines for global transfers of personal data and to implement compliance programmes with review of existing processes and routines. Many of the projects in which we participate are on a global scale and we have therefore developed a network of partners with relevant expertise.

We also help our clients to conduct GAP analyses in relation to the new regulation. The purpose of the analysis is to create an understanding of what the main data protection risks are, as well as helping clients identify and prioritise the actions needed to meet the new requirements.

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